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In the

Supreme Court of the United States

ELENA MARIE ANGLIN (Appellant in the United States Court of Appeals for the District of Columbia Circuit),

v.

UNITED STATES OF AMERICA and ALICE E. BARRON (Appellees in the United States Court of Appeals for the District of Columbia Circuit)

PETITION FOR WRIT OF CERTIORARI
AND
BRIEF IN SUPPORT THEREOF.

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PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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v.

UNITED STATES OF AMERICA and ALICE E. BARRON, *Respondents.*

PETITION FOR WRIT OF CERTIORARI.

To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States

The Petitioner, Elena Marie Anglin, for her petition herein, respectfully shows to this Honorable Court as follows:

I.

Pursuant to the provisions of Rule 38, particularly subdivisions 5-b and 5-c of said rule of this Honorable Court, your Petitioner respectfully applies for a writ of certiorari to review the decision and judgment of the United States Court of Appeals for the District of Columbia Circuit, rendered in the above entitled proceedings on December 27, 1950 (R. 74), reported in 185 F. (2d) 755, which affirmed the determination and judgment of the United States District Court for the District of Columbia, rendered herein on May 24, 1950 (R. 10).

II.

The Jurisdiction of This Court.

The jurisdiction of this Court is invoked under Title 28, F.C.A., at Sec. 1254; Act of June 25, 1948, C. 646, §1, 62 Stats. 928.

This was a civil action brought by the widow of a deceased naval, enlisted man against his mother and the United States of America to recover the proceeds of a National Service Life Insurance policy in the face sum of $10,000.00 (R. 2). The District Court had jurisdiction and the subject matter raised by the issues was governed by Section 19 of the Act of June 7, 1924, 43 Stat. 612, as amended, 38 U.S.C.A., Sec. 445, Sec. 617, Part 1, Title VI, of an Act of October 8, 1940, 54 Stats. 1014, as amended, 38 U.S.C.A., Sec. 817.

The District Court entered judgment in favor of the mother (R. 10). The Court of Appeals had jurisdiction of Petitioner's appeal from that judgment under the provisions of Sec. 1291, Sec. 1292, Title 28, of the United States Code.

The Court of Appeals affirmed the District Court (R. 67), and its opinion was printed on November 16, 1950 (R. 67), but the judgment was not rendered until December 27, 1950, when a petition for rehearing was denied (R. 74).

III.

Statement of Matters Involved.

Roland E. Anglin was a son of the first marriage of his mother, Alice E. Barron. This marriage had terminated in a divorce (R. 44). She later remarried (R. 44), and thereafter, when Roland E. Anglin was eighteen years of age (R. 45), he left home; and on the 16th day of July, 1941 he entered the service of the United States Navy (R. 2). At that time he was unmarried but he saw his mother only three times between the time he entered the naval service

and prior to his marriage. On the first occasion his mother suggested that he take out insurance on his life (R. 45).

Thereafter, while still unmarried, on December 18, 1942, he applied for and was granted National Service Life Insurance in the sum of $10,000.00. Alice E. Barron was named as beneficiary of the entire amount (R. 2 & 3). In October of 1944 Roland E. Anglin married this Petitioner (R. 34), and the Petitioner and the said Roland E. Anglin lived together near the naval base (R. 12).

In November of 1944 Roland E. Anglin indicated, in the presence of other persons, that he was going to change the beneficiary of his life insurance policy (R. 24, 28 & 33), and on that day he went with two of his Navy friends to the personnel office, on the naval base in Pennsylvania where they were stationed, for the purpose of changing the beneficiary on his policy (R. 13 & 28). His two friends went with him (R. 13, 28, 32 & 27).

At the personnel office Anglin received a form identical with Plaintiff's (Petitioner's) Exhibit No. 1 (R. 57) which he filled out in the presence of his friends (R. 14 & 28). He was seen to put his wife's name in as beneficiary and he was seen to execute the form (R. 14 & 28). The completed forms were then delivered to the yeoman in the personnel office (R. 28). That afternoon Roland E. Anglin stated, in the presence of at least two persons that he had changed the beneficiary of the policy, naming his wife (R. 25 & 33).

On December 25, 1945, a child was born of the marriage of Roland E. Anglin and your Petitioner, Elena Marie Anglin (R. 14 & 26).

On June 24, 1946, Roland E. Anglin died as a result of an airplane accident. He was survived by his widow and child. Memorial services were held on the base and at that time the mother made inquiry as to the insurance policy and was advised in the presence of the widow that the beneficiary of the policy had not been changed (R. 35). Although her husband had advised her that he had made such a change, when the officer on the base said it had not

been changed she did not question that statement (R. 39). Afterwards the widow, your Petitioner, learned that it had been changed and her source of information was the men who had been with Anglin when he made the change. The widow then made claim for the proceeds of the policy (R. 36).

The Veterans Administration denied the claim of Petitioner (R. 36), and this suit was then brought in the United States District Court for the District of Columbia.

IV.

Statutes Involved.

The National Service Life Insurance Act of 1940, as amended, Sec. 802(g) provides in part:

> ". . . and shall, subject to regulations, at all times have the right to change the beneficiary of such insurance without the consent of such beneficiary or beneficiaries but only within the classes herein provided . . ."

Administrator of Veterans' Affairs Regulation, 38 Code Fed. Regs. Section 10.3447 (Cum. Supp.), 7 Fed. Reg. 8364 (1942), as amended, 38 Code Fed. Regs. Section 10.3447 (Supp. 1946), 11 Fed. Reg. 9283 (1946) provides:

> "A change of beneficiary to be effective must be made by notice in writing signed by the insured or his agent and must contain sufficient information to identify the insured. Whenever practicable such notice shall be given on blanks prescribed by the Veterans Administration. Upon receipt by the Veterans Administration a valid designation or change of beneficiary shall be deemed to be effective as of the date of execution . . ."

V.

The Questions Presented.

(a) Where Respondent, Barron, contended in the District Court that a minimum requirement for a change in beneficiary on a National Service Life Insurance policy is that it be evidenced by a paper writing, and where the trial court (in its finding of facts) said that "the insured did not effect a change of beneficiary . . ." (R. 8), is such finding one of facts specially so as to prevent the reconsideration of the legal question above set forth?

(b) The question is really whether a change of beneficiary form under a National Service Life Insurance policy may be proven by parol evidence where said form does not appear in any of the government files where it should be.

(c) Presuming that the prior question is answered in the affirmative, a further question is presented as to whether testimony of two persons who were present when the form was signed and who identified the form used, and testified as to the execution of said form and the completion of the same, coupled with the testimony of two other witnesses as to statements of decedent that he had changed the beneficiary, are sufficient to prove a lost instrument.

VI.

Grounds for Granting Writ.

1. The United States Court of Appeals for the District of Columbia Circuit determined that the District Court's decision that the production of a writing was a minimum requirement of proof for a change of beneficiary in a National Service Life Insurance policy. Its decision was in direct conflict with the decision of the Circuit Court of Appeals for the Tenth Circuit (*Widney* vs. *U. S., et al,* 178 F. (2d) 880.

2. There is no decision of this Court on that point, and inasmuch as it involves a statute of the United States and is of general importance it should be settled by this Court.

3. When and if the United States Court of Appeals for the District of Columbia Circuit briefly concluded that the District Court had found the facts specially in accordance with Rule 52-a of the Federal Rules of Civil Procedure, in using the words "no change had been effected", it so far departed from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's power of supervision.

VII.

Petitioner begs leave to amplify her argument and reasons for granting the writ in the brief which is herewith submitted.

VIII.

Wherefore, your Petitioner respectfully prays that a writ of certiorari be issued under the seal of this Court directed to the United States Court of Appeals for the District of Columbia Circuit, sitting at Washington, D. C., commanding that Court to certify and send to this Court, on a day to be designated, a full and complete transcript of the record and of all proceedings had by the said United States Court of Appeals for the District of Columbia Circuit in said cause, to the end that this cause may be reviewed and determined by this Honorable Court; that the said decision and judgment of the United States Court of Appeals for the District of Columbia Circuit be reviewed by this Honorable Court; and that your Petitioner may be granted such relief as may seem proper.

And your Petitioner will forever pray.

ELENA MARIE ANGLIN,
Petitioner.

In the

Supreme Court of the United States

ELENA MARIE ANGLIN, *Petitioner,*

v.

UNITED STATES OF AMERICA and ALICE E. BARRON, *Respondents.*

BRIEF IN SUPPORT OF WRIT OF CERTIORARI.

I.

Must a Change of Beneficiary of a National Service Life Insurance Policy be Evidenced by a Writing as a Minimum Requirement?

The court below apparently determined that the absence in the government records of the form of change of beneficiary was controlling and that therefore no oral testimony would make up for or take the place of such missing document. It is submitted, however, that the contents of a written instrument, lost or destroyed, may be shown by proper evidence provided the due execution of the instrument and its loss have been proven.—*Renner* v. *The Bank of Columbia,* 22 U.S. 581; 6 Law Ed. 166.

As shown by the Statement of Facts, Petitioner proved the form (Plaintiff-Petitioner's Exhibit No. 1) (R. 57), the execution thereof, the naming of Petitioner as beneficiary, and the delivery of the form to the proper office.

It is true that the United States Court of Appeals for the District of Columbia Circuit, in *Cohn* v. *Cohn* (171 F. (2d) 828; 84 U. S. App. D. C. 218) said:

> "[1] The regulations of the Veterans Administration require that a change in the named beneficiary of a National Service Life Insurance policy be evidenced in writing. While the courts have often held that no particular form is necessary for that writing, the requirement that there be a writing is the minimum necessary to protect the public, the families and loved ones of servicemen and the interests of the deceased insured veterans themselves against unmitigated fraud. Not only is the requirement reasonable, but it is necessary."

but it is also true that that Court, in the same case also said:

> "The reasonable and, in our view, necessary proof is a writing, which, if not currently existing, should be proved by the well-established rules for making such proof."

and the United States Court of Appeals for the Tenth Circuit, in *Widney* v. *U. S.*, 178 F. (2d) 880, in a case strikingly similar in facts to the case at bar, stated that the production of the change of beneficiary form as a minimum requirement is not necessary so long as the lost instrument is proven.

II.

The Trial Court's Finding in the Case at Bar Was Not One of Facts Specially So as to Prevent the Redetermination of the Legal Question.

The case of *Cohn* v. *Cohn, supra,* was relied upon by the trial court in the case at bar, and the trial court reached a conclusion that the insured did not effect a change of beneficiary.

The issues of fact before the trial court were:

(a) Did decedent tell his friends that he was going to change the beneficiary on his National Service Life Insurance policy (R. 24 & 33)?

(b) Did decedent go with Flaherty and Sirios to the personnel office to change his beneficiary on his policy (R. 13, 14, 28), and did decedent actually fill in the forms provided and deliver same to the yeoman at said office (R. 13, 14, 28)?

(c) Did decedent advise Oswald that he had changed the beneficiary of his National Service Life Insurance policy (R. 33)?

But the trial court did not afford a clear understanding of the basis of its decision below and did not resolve the factual issue specially. In other words, the trial court did not say that the decedent went or did not go to the personnel office to change the beneficiary on his National Service Life Insurance, and the trial court did not say that decedent did or did not attempt, by the execution of papers, to change the beneficiary.

The ultimate *fact* (as distinguished from the legal conclusion) to have been determined in the case at bar was not that decedent successfully accomplished a change of beneficiary, but did he go to the personnel office and there execute papers. The trial court was absolutely silent on this point.

Considered from another standard it becomes increasingly clear that the trial court was determining not the question of fact but the ultimate conclusion of law.

The word "effect" as used means "to accomplish" (*U.S.* v. *McCall*, 164 F. 587, 588).

Substituting "accomplish" for "effect" we clearly see that the trial court was not making a special finding of fact that decedent did or did not go to the office at the naval base and fill out a form, but that no matter what he did, he failed to accomplish a change of beneficiary. In

other words, the trial court adopted the view of counsel for Respondent, Barron, that the production of a paper writing was the minimum requirement of the law and that it was not necessary to make any definite findings of fact as required by the provisions of Rule 52 of the Federal Rules of Civil Procedure.

In the cited case the court defined "to effect" as "to achieve, or bring to an issue of full success."

Other courts have defined the word "effected" to mean "caused"[1], "completed or produced"[2], "carried to completion, or consummated"[3]. It has also been held to mean "enforced"[4].

III.

Respondent, Barron, May Claim That the Evidence on Behalf of the Petitioner Was Not Creditable.

It may be claimed by Respondent, Barron, that errors[5] appearing in the testimony of the four witnesses presented by the Petitioner justify the conclusion that their testimony was not believed. These witnesses were testifying

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[1] *Jefferson Standard Life Insurance Co.* v. *Lightsey*, 49 F. (2d) 586, 588.

[2] *Phipps* v. *North Pelham*, 70 N.Y.S. 630, 632; 61 App. Div. 442.

[3] *Brown* v. *U.S.*, 143 F. 60, 64; 74 C.C.A. 214.

[4] *Staber* v. *Collins*, 100 N.W. 527, 528; 124 Conn. 543.

[5] Much was made of the statement by one witness that "Helen" Anglin was inserted as beneficiary on the original change of beneficiary form (App. 14, 18), yet on the marriage certificate the name appears as "Helen" (App. 34).

A great deal has been said, heretofore, about a reported statement by decedent (App. 24) in which the witness was supposed to have said that decedent had referred to his child before the child was conceived or born. However, the record (App. 24) shows the quotation as being only "I had better go up and take care of my insurance so that my wife, if anything happened to me," and the remainder a statement of what the witness believed was in the mind of the decedent.

in 1950 to facts occurring in 1944 and *some* of their testimony may be subject to *some* error, and it is frankly admitted that *all* of their testimony is not perfect. But the basic question was clearly and convincingly established, and in any event *the trial court did not determine the facts.*

Respectfully submitted,

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